

## **9 FAM 42.67**

### **NOTES**

*(CT:VISA-2172; 09-11-2014)*  
*(Office of Origin: CA/VO/L/R)*

## **9 FAM 42.67 N1 REGISTRATION FOR IMMIGRANT VISA**

*(CT:VISA-2172; 09-11-2014)*

An applicant should be considered registered for immigration to the United States upon the execution of the Form DS-260, Online Application for Immigrant Visa and Alien Registration, and the payment of the prescribed fee.

## **9 FAM 42.67 N2 EXECUTING THE IMMIGRANT VISA (IV) APPLICATION**

### **9 FAM 42.67 N2.1 In General**

*(CT:VISA-2172; 09-11-2014)*

You must be satisfied that the applicant has read the completed form, or, if the applicant is unable to read, he or she has been informed of the contents therein. You must ask the applicant to subscribe to the information therein. If the alien is unwilling to subscribe to the information unless changes are made, the required changes must be made. You must inform the applicant that all changes will become a part of the official record associated with the application. The application must be subscribed to or affirmed and signed by or on behalf of the applicant before a consular officer.

### **9 FAM 42.67 N2.2 Applicants Submitting a Form DS-260**

*(CT:VISA-2172; 09-11-2014)*

- a. **Collecting the signature**-- You must collect the biometric signature from the applicant contemporaneously with the administration of the oath.
  - (1) All applicants over the age of 14 who are legally competent and physically capable must biometrically sign their application under oath by providing a fingerprint. You must use the IVO Oath Administration box to collect the

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biometric and record the administration of the oath. The fields in the IVO Oath Administration box will be pre-populated with the applicant's information; you must administer the oath, collect the biometric signature, and certify that the oath has been administered.

- (a) You may encounter an applicant who, while legally competent to attest to the application, is physically unable to provide a biometric signature. Generally speaking, you will only encounter this situation in cases in which the fingerprints were waived. However, not all individuals who have had their fingerprints waived are exempt from the biometric signature requirement. A full set of fingerprints is not required for the biometric signature, only 1 fingerprint is required. The quality of the fingerprint does not need to meet the standard for the ten-print collection you should attempt to collect a biometric signature from all individuals except those without fingers. In situations in which the applicant is physically incapable of providing the biometric signature, you must select "PHYSICALLY UNABLE TO PROVIDE FINGERPRINT AS AN ELECTRONIC SIGNATURE" in the Oath Taker field and annotate the Oath Remarks field with the reason for the lack of biometric signature. For example, if the applicant has no fingers, you should remark "THE APPLICANT DOES NOT HAVE FINGERS, PHYSICAL SIGNATURE OBTAINED." Unless subject to the exceptions below, you must collect the applicant's physical signature or mark. The signature may be collected either on the form set forth in Exhibit I or on a separate piece of paper. This page must be scanned into the case and retained as part of the visa record. You must include on the paper form with the applicant's signature, the case number (located on the left hand side of the confirmation page), and the applicant's full name.
  - (b) If the applicant is unable to provide a biometric signature and is illiterate, or is otherwise unable to sign the application but has been informed of the contents and is willing to attest, you must witness the applicant placing his or her signature or mark in the space provided for signature on the paper form (please see 9 FAM 42.67 Exhibit I-III).
  - (c) A self-attesting applicant may not refuse to provide a biometric signature. For information on refusal to provide biometric signature by a proxy please see below.
  - (d) If the application is not adjudicated within one year of the original administration of the oath, the applicant is required to complete a new DS-260, be placed under oath again, and to biometrically sign the new application.
- (2) If the applicant is under the age of 14, a proxy must take the oath and biometrically sign the application on behalf of the minor, regardless of whether or not that minor was fingerprinted. A parent, a legal guardian, or

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an individual having legal custody of, or a legitimate interest in the applicant may act as the applicant's proxy for the purpose of attesting to and biometrically signing the application. When administering and recording the attestation and biometric signature for a minor you must indicate in the IVO Oath Administration box that the applicant is not self-attesting by selection "NO" to the question "The Applicant is self-attesting to the Oath." You must select "Minor (younger than age 14)" from the REASON drop down in the IVO Oath Administration box.

- (a) If there are other applicants associated with the case, the IVO Oath Administration will automatically default to the principal applicant as the oath taker and pre-populate that individual's information. You can select an alternative adult associated with the case using the "Other Applicant – ID" drop down. You should administer the oath and collect the biometric signature as appropriate.
  - (b) If no other adult associated with the case is available, an individual not associated with the case may attest and biometrically sign on behalf of the minor, in which case you must select the option for "Other Non-Applicant" and then select the appropriate relationship from the "Relation to Applicant" dropdown. The options on this drop down include Parent, Legal Guardian, Adoptive/Prospective Parent, Attorney, and Other. If you select "Other" you must explain the relationship in the Oath Remark field, then administer the oath and collect the biometric signature as appropriate.
  - (c) A proxy who is associated with the case who has been fingerprinted cannot refuse to provide a biometric signature. Only a non-associated proxy may refuse to provide a biometric signature. If the proxy refuses to provide a biometric signature, you must indicate in the IVO Oath Administration box that the proxy was "Unwilling to provide a fingerprint as an electronic signature" and collect a physical signature from the proxy on either the form set forth in Exhibit II or a separate printed sheet of paper. This page must be scanned into the case and retained as a part of the visa record. If you do not use the confirmation page as the signature page, you must include the case number (located on the left hand side of the confirmation page), the applicant's full name, and the full name of the proxy.
- (3) If the applicant is over the age of 14 but legally or mentally incapacitated, a proxy must take the oath and biometrically sign the application on behalf of the applicant. A parent, a legal guardian, or an individual having legal custody of, or a legitimate interest in the applicant may act as the applicant's proxy for purposes of attesting to and biometrically signing the application. When administering and recording the attestation and biometric signature for an incapacitated adult, you must indicate in the IVO Oath Administration box that the applicant is not self-attesting by selecting "NO" to the question "The Applicant is self-attesting to the Oath." You

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must select "Legally/Mentally Incapacitated Adult" from the REASON drop down in the IVO Oath Administration box.

- (a) If there are other applicants associated with the case, the IVO Oath Administration will automatically default to the principal applicant as the oath taker and pre-populate that individual's information. You can select an alternative adult associated with the case using the "Other Applicant – ID" drop down. You should administer the oath and collect the biometric signature as appropriate.
- (b) If no other adult associated with the case is available an individual not associated with the case may attest and biometrically sign on behalf applicant, in which case you must select the option for "Other Non-Applicant" and then select the appropriate relationship from the "Relation to Applicant" dropdown. The options on this drop down include Parent, Legal Guardian, Adoptive/Prospective Parent, Attorney, and Other. If you select "Other" you must explain the relationship in the Oath Remark field. You then administer the oath and collect the biometric signature as appropriate.
- (c) A proxy who is associated with the case who has been fingerprinted cannot refuse to provide a biometric signature. Only a non-associated proxy may refuse to provide a biometric signature. If the proxy refuses to provide a biometric signature you must collect a physical signature from the proxy on either the applicant's DS-260 confirmation page or a separate printed sheet of paper. This page must be scanned into the case and retained as a part of the visa record. If you do not use the confirmation page as the signature page, you must include the case number (located on the left hand side of the confirmation page), the applicant's full name, the full name of the proxy, and the proxy's relationship to the applicant.

**b. Administering the Oath/Affirmation.--**

- (1) You must state the following words: "Do you affirm that the statements made by you in this application and interview are true and correct to the best of your knowledge?" The applicant must affirm, "I do", or if unable to speak give a physical indication of his or her affirmation.
- (2) Posting Statement Near Fingerprint Scanner.--Posts must display the following language in the window above the fingerprint scanner, or on the counter next to the scanner, whichever works best for post, as long as it is clearly visible to the applicant. "By submitting my fingerprint, I am affirming under penalty of perjury that I have read and understood the questions in my immigrant visa application and that all statements that appear in my immigrant visa application have been made by me and are true and complete to the best of my knowledge and belief. Furthermore, I affirm under penalty of perjury that all statements that I have made, or will make, during my interview are true and complete to the best of my

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knowledge and belief.” Posts that have television monitors in the waiting areas, may also want to place the statement near the monitors, but must still display it in front of or above the fingerprint scanner. At posts where officers interview in a language other than English, post should display this text in English and in the appropriation local language(s).

- c. **Consular Officer Signature.**--Your signature and consular title will be automatically recorded in the IVO system at the time of adjudication.

## **9 FAM 42.67 N3 FAILURE OF APPLICATION TO COMPLY WITH INA**

*(CT:VISA-1893; 09-19-2012)*

See 9 FAM 40.201 Related Statutory Provisions.

## **9 FAM 42.67 N4 ADVISORY OPINION (AO) IS REQUIRED**

*(CT:VISA-2172; 09-11-2014)*

DS-260 Cases.--If an AO is requested in a particular case, you must refuse the visa under INA 221(g) and scan each relevant document into IVO. You must include the file copy of the AO request, of if the request is classified, cross-reference the file copy. In a case where an AO is being sought, the application fee is valid until a final decision is reached and post must not charge a new application fee. (See 9 FAM 42.71 N2.1-2 (5))

## **9 FAM 42.67 N5 FINAL ACTION**

### **9 FAM 42.67 N5.1 Issuing or Refusing Visa**

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Once an application has been executed, you must either issue the visa or refuse it. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. (See 9 FAM 42.81 Procedural Notes for the refusal procedure and 9 FAM 40.6 Exhibit I for waiver relief.)

## **9 FAM 42.67 N5.2 Issuance Procedures**

*(CT:VISA-2172; 09-11-2014)*

See 9 FAM 42.73 Related Statutory Provisions and 9 FAM 42.73 Notes.

## **9 FAM 42.67 N5.3 Visa Refusals**

*(CT:VISA-2172; 09-11-2014)*

See 9 FAM 42.81 Related Statutory Provisions and 9 FAM 42.81 Notes.

## **9 FAM 42.67 N5.4 Terminating Registration under INA 203(g)**

*(CT:VISA-2172; 09-11-2014)*

See 9 FAM 42.83 Related Statutory Provisions.

## **9 FAM 42.67 N6 FINGERPRINTING**

### **9 FAM 42.67 N6.1 Fingerprint Requirement**

*(CT:VISA-2172; 09-11-2014)*

- a. All immigrant visa (IV) applicants age 14 and above, unless otherwise exempt, are required to submit biometric fingerprints electronically through immigrant visas overseas (IVO). There is no upper age limit for IV applicants. (See Appendix L, 100 for detailed procedures.)
- b. In countries where there is no Department of Defense (DOD) or Department of Homeland Security (DHS) presence, consular officers should provide fingerprint services for residents in their district applying for expeditious naturalization or adoption. (See 9 FAM Appendix N, 101 a.)
- c. The post may use Form FD-258, Applicant Fingerprint Card (with self-addressed envelopes).

### **9 FAM 42.67 N6.2 Proper Fingerprinting**

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The consular officer in charge of visa operations at each post must instruct personnel taking fingerprints to follow closely the instructions on the reverse of the fingerprint chart and to familiarize themselves thoroughly with the correct fingerprinting techniques described by the Federal Bureau of Investigation (FBI). (See 9 FAM 42.67 Exhibit I, Recording Legible Fingerprints.) The consular officer must also personally check the fingerprint cards from time to time to ensure that

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such techniques are applied. If fingerprints are defective, the consular officer must reject them and require that the prints be retaken. This is costly and time-consuming for the post as well as inconvenient for the alien.

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